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# **UNITED STATES DISTRICT COURT**

## **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

JUNAN CHEN, KELLY YAO WANG,  
CHANGSHUANG WANG,  
JINSHUANG LIU, LICHU CHEN, and  
WENQUEI HONG,

Plaintiffs,

v.

COUNTY OF SANTA BARBARA;  
SANTA BARBARA COUNTY  
SHERIFF'S DEPARTMENT; CAPRI  
APARTMENTS AT ISLA VISTA;  
ASSET CAMPUS HOUSING; and  
DOES 1 through 200, Inclusive,

Defendants.

Case No. 2:15-CV-01509 JFW-JEM

### **JOINT RULE 26(f) REPORT**

Complaint Served: March 19, 2015  
First Amended Complaint: Served May 20, 2015  
CAPRI FAC Response Date:  
Original date: May 27, 2015  
New Date: June 15, 2015 (Per Doc. No. 41)  
COUNTY Response to First Amended Complaint due: June 8, 2015

Pursuant to Rule 26 of the Federal Rules of Civil Procedure, Local Rule 26-1, and the Court's Minute Order of March 18, 2015, a meeting was held among the parties on May 14, 2015. The meeting was attended by the following counsel:

\* For all plaintiffs, Patrick McNicholas, David Angeloff and Todd Becker;

\* For defendant Hi Desert Mobile Home Park LP, erroneously sued as "Capri Apartments at Isla Vista" (Capri), Eugene Egan and Christopher Kanjo;

\* For defendant Asset Campus Housing (Asset), William Kronenberg and Stephen Fleischer-Ihn;

\* For defendants County Of Santa Barbara and Santa Barbara County Sheriff's Department (collectively "County of Santa Barbara"), Lisa Rothstein.

This report responds to the information sought by the Court's Minute Order of March 18, 2015, as follows:

**1. Basis for and Issues re Jurisdiction, Service Issues:**

This Court has original jurisdiction under 28 U.S.C. § 1331 because Plaintiffs' Complaint includes a claim against Defendants for violation of 42 U.S.C. § 1983. This Court has supplemental jurisdiction over all other claims or causes of action asserted in the Complaint under the laws of the State of California pursuant to 28 U.S.C. § 1367. All named Defendants have been served.

**2. Brief Chronology:**

This matter is a wrongful death action brought by the parents of three young men who were killed by a cohabitant, Elliot Rodger ("Rodger") in the apartment they were living in and visiting, respectively, on May 23, 2014 in Isla Vista, California. The apartment complex in which the decedents and Rodger lived was known as the "Capri Apartments," and is owned by Capri and was managed at the time by Asset.

The Plaintiffs allege that Capri and ACH negligently failed to investigate or

1 evict Rodger and affirmatively undertook to place Cheng-Yuan “James” Hong  
2 (“Hong”) and Weihai “David” Wang (“Wang”) as roommates with Rodger, despite  
3 the fact that Capri and ACH had been warned by a prior roommate of Rodger’s that  
4 Rodger was a “ticking time bomb” and a threat to those in the apartment. The  
5 Plaintiffs allege this affirmative pairing exposed Hong and Wang, as well as their  
6 foreseeable guest, George Chen (“Chen”), to a known danger and resulted in their  
7 deaths.

8 Capri and Asset deny all of Plaintiffs’ allegations as against Capri and Asset,  
9 and add that Capri had no knowledge of, and played no role in the tenant issues  
10 alleged by plaintiffs, including the assignment of roommates.

11 The Plaintiffs further allege that the County of Santa Barbara and the Santa  
12 Barbara County Sheriff’s Department effected constitutional deprivations on the  
13 decedents when Sheriff’s Deputies, recklessly and with deliberate indifference,  
14 created a dangerous condition by failing to reasonably investigate, reasonably  
15 perform any background check, and reasonably investigate the online postings of  
16 Rodger as part of conducting a “wellness check” upon him. These actions by the  
17 County of Santa Barbara and the Santa Barbara County Sheriff’s Department  
18 increased and modified the danger Rodger posed to the decedents.

19 County of Santa Barbara denies all of Plaintiffs’ allegations as against  
20 County.

### 21 **3. Brief Statement of Disputed Points, with References:**

#### 22 As to Plaintiffs:

23 Whether Capri and ACH owed a duty to the decedents based on the specific  
24 warning given to Capri and ACH by Elliot Rodger’s previous roommate [*Barber v.*  
25 *Chang*, 151 Cal. App. 4th 1456, 1464 (2007)]; Whether Capri and ACH owed a duty  
26 to the decedents based on Capri and ACH’s affirmative placement of Hong and  
27 Wang as roommates with Elliot Rodger [*Delgado v. Trax Bar & Grill* 36 Cal.4th  
28 224, 237 (2005)].

Whether the County of Santa Barbara effectuated a constitutional deprivation on the decedents under the "danger creation" doctrine by creating, increasing, and modifying a danger posed by Elliot Rodger to the decedents [*Kennedey v. Ridgefield* 439 F.3d 1055].

As to Capri:

Whether Capri owed any duty to plaintiffs to protect against the criminal conduct of Elliot Rodger absent notice of a "propensity for violence" [*Barber v. Chang*, 151 Cal. App. 4th 1456, 1464 (2007)]; whether the criminal conduct of Elliot Roger can be deemed reasonably foreseeable absent actual knowledge by Capri or its agents (constructive knowledge or "should have known" are insufficient standards) [*Margaret W. v. Kelley R.*, 139 Cal. App. 4th 141, 156 (2006)]; whether the other behaviors of Elliot Roger alleged to have been known to Capri or its agents give rise to a duty to plaintiffs [*Andrews v. Mobile Aire Estates*, 125 Cal.App.4th 578 (2005)]; whether the alleged knowledge of Capri or its agents that Rodger was mentally unstable gave rise to a duty to plaintiffs [*Davis v. Gomez*, 207 Cal.App.3d 1401 (1989)]; whether the release and express assumption of risk for the conduct of roommates contained in the lease agreements for the premises at issue affords "a complete defense" [*Eriksson v. Nunnink*, 233 Cal.App.4th 708, 725(2015)]; whether an act of Capri or its agents was a substantial factor causing the ultimate injury. [*Saelzler v. Advanced Group 400*, 25 Cal.4th 763, 780-781 (2001)]; whether and to what extent Capri would be liable, as alleged principal, for alleged wrongful acts of Asset.

As to Asset:

Whether Asset owed any duty to plaintiffs to protect against the criminal conduct of Elliot Rodger absent notice of a "propensity for violence" [*Barber v. Chang*, 151 Cal. App. 4th 1456, 1464 (2007)]; whether the criminal conduct of Elliot Roger can be deemed reasonably foreseeable absent actual knowledge by Asset or its agents (constructive knowledge or "should have known" are insufficient

standards) [*Margaret W. v. Kelley R.*, 139 Cal. App. 4th 141, 156 (2006)]; whether the other behaviors of Elliot Rodger alleged to have been known to Asset or its agents give rise to a duty to plaintiffs [*Andrews v. Mobile Aire Estates*, 125 Cal.App.4th 578 (2005)]; whether the alleged knowledge of Asset or its agents that Rodger was mentally unstable gave rise to a duty to plaintiffs [*Davis v. Gomez*, 207 Cal.App.3d 1401 (1989)]; whether Asset provided measures reasonable under the circumstances to protect tenants [*Delgado v. Trax Bar & Grill*, 36 Cal.4th 224, 243 (2005)]; whether the release and express assumption of risk for the conduct of roommates contained in the lease agreements for the premises at issue affords Asset "a complete defense" [*Eriksson v. Nunnink*, 233 Cal.App.4th 708, 725 (2015)]; whether an act of Asset or its agents was a substantial factor causing the ultimate injury. [*Saelzler v. Advanced Group 400*, 25 Cal.4th 763, 780-781 (2001)].

As to County of Santa Barbara:

County of Santa Barbara disputes Plaintiffs' allegation that County violated any Plaintiffs' due process rights under the Fourteenth Amendment to the U.S. Constitution when County employees went to Elliot Rodger's residence on April 30, 2015. County asserts that it had no duty to protect Plaintiffs' or their sons from crimes of Elliot Rodger, who was a private actor, and that no exception, particularly the danger creation exception to this rule, applies here. *DeShaney v. Winnebago County Dep't of Social Services*, 489 U.S. 189, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989); *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 125 S.Ct. 2796, 162 L.Ed.2d 658 (2005).

County further disputes Plaintiffs' allegations on grounds that even if a County employee deprived any plaintiff of a constitutional right, that employee was not acting pursuant to an expressly adopted official policy or a longstanding practice or custom of the County; nor were the County's training policies inadequate to train its deputies; nor was the County deliberately indifferent to obvious consequences of a failure to train its deputies adequately. *Monell v. Dep't of Social Services of the*

1 *City of New York*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *City of*  
 2 *Canton v. Harris*, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989). County  
 3 further disputes that any act of a County employee or the County was the moving  
 4 force causing the ultimate injury.

5 **4. Prior, Pending and Anticipated Motions:**

6 As to Plaintiffs:

7 Plaintiffs do not anticipate filing any motions at this time.

8 As to Capri:

9 Rule 12(b)6 Motion to Dismiss based on no duty arising from facts alleged, to  
 10 be filed before May 27, 2015 June 15, 2015; if denied, anticipated Rule 56 Motion  
 11 for Summary Judgment based upon no facts adduced to support a duty, and further  
 12 based upon an express assumption of the risk by the decedents that extends to the  
 13 within wrongful death claims, and summary adjudication that any alleged liability of  
 14 Capri is vicarious only, to be filed in or around February or March, 2015.

15 As to Asset:

16 Anticipated Rule 56 Motion for Summary Judgment based upon no facts  
 17 shown to support a duty owed, express assumption of risk, and causation to be filed  
 18 in or around March 2015.

19 As to County of Santa Barbara:

20 On May 4, 2015, County of Santa Barbara filed a motion to dismiss Plaintiffs'  
 21 first cause of action alleged in their complaint under Rule 12(b)(6). That motion was  
 22 stricken by the Court on May 7, 2015; County of Santa Barbara therefore answered  
 23 the complaint.

24 Plaintiffs filed a First Amended Complaint on May 20, 2015. County of Santa  
 25 Barbara intends to file a motion for judgment on the pleadings under Rule 12(c) but  
 26 has not ruled out the alternative of filing a motion to dismiss the first amended  
 27 complaint under Rule 12(b). If Plaintiffs' action proceeds, County of Santa Barbara  
 28 expects to file a Rule 56 motion for summary judgment on grounds that the Court

1 may determine as a matter of law that County of Santa Barbara cannot be liable  
2 under any *Monell* theory of liability.

3 **5. Changes to Parties, Claims, Defenses:**

4 The parties do not anticipate changes to parties, claims, or defenses.

5 **6. Compliance with FRCP26(a) Disclosures:**

6 All parties will have completed their disclosures by the June 1, 2015 deadline  
7 for the within report contained in the Court's Minute Order of March 18, 2015.

8 **7. Discovery:**

9 The parties' full discovery plan is attached as an Addendum to this report.

10 **8. Related Case:**

11 The parties are aware of one related case, currently pending in the United  
12 States District Court, Central District of California, (but not pending before another  
13 judge of this Court) styled ANTOINE CHERCHIAN Plaintiff vs. COUNTY OF  
14 SANTA BARBARA; SANTA BARBARA COUNTY SHERIFF'S  
15 DEPARTMENT; REGENTS OF THE UNIVERSITY OF CALIFORNIA; and  
16 DOES 1-100, bearing Case No. 2:15-CV-0175-JFW-JEM

17 **9. All Relief Sought, Damages and Calculation Thereof:**

18 Each Plaintiff seeks damages from the Defendants in an amount not less than  
19 \$10,000,000.00, comprised of compensatory and general damages for past, present  
20 and future psychological, emotional and physical pain, suffering, distress and injury  
21 from the loss of their sons; medical and incidental expenses in an amount to be  
22 proven, and; reasonable attorneys' fees pursuant to U.S.C. § 1988. Computation of  
23 each category cannot be made at this time, as discovery has not yet begun.

24 **10. Regarding Certification of Interested Parties:**

25 As to Plaintiffs:

26 Filed its Certification on March 4, 2015. Other than the parties to this action  
27 as identified in its Certification, Plaintiffs are not aware of any other entities having  
28 any interest in the subject matter or in any party, or any other interest that could be



1 substantially affected by the outcome.

2 As to Capri:

3 Filed its Certification on April 7, 2015. Other than the parties to this action as  
4 identified in its Certification, Capri is aware of no entities having any interest in the  
5 subject matter or in any party, or any other interest that could be substantially  
6 affected by the outcome.

7 As to Asset:

8 Filed its Certification on May 27, 2015. Other than the parties to this action as  
9 identified in the Certification, Asset is not currently aware of entities having interest  
10 in the subject matter or in any party, or any other interest that could be substantially  
11 affected by the outcome.

12 As to County of Santa Barbara:

13 County of Santa Barbara filed its Certification and Notice of Interested Parties  
14 on March 18, 2015. The contents of that certification identify the County of Santa  
15 Barbara and its Sheriff's Department as interested parties. Aside from all parties to  
16 this civil action, the County of Santa Barbara is unaware of any party with an  
17 interest in the subject matter of this case or with any interest that could be  
18 substantially affected by the outcome of this case.

19 **11. Appropriate Dates:**

20 Trial: August 30, 2016

21 Final Pre-Trial Conference: August 8, 2016

22 Motion Cut-Off: July 18, 2016

23 Discovery Cut-Off: June 20, 2016

24 Expert Disclosures: May 16, 2016

25 **12. Trial:**

26 The parties anticipate a jury trial, with a preliminary estimate of 20 Court  
27 days.

28 ///



**13. Efforts to Resolve to Date/Maximization of Settlement Prospects:**

Preliminary settlement discussions have taken place, and parties expect that private mediation will be of assistance.

**14. Complex Case?**

The parties do not believe this matter is complex or requires reference to the procedures in the Manual on Complex Litigation.

**15. Dispositive Motions:**As to Plaintiffs:

Plaintiffs do not intend to bring any dispositive motions and will oppose the dispositive motions brought by each defendant.

As to Capri:

Both the Rule 12(b)6 Motion and the Rule 56 Motion for Summary Judgment and Summary Adjudication identified at Item 4 above are potentially dispositive of the case as to this defendant.

As to Asset:

Anticipated Rule 56 Motion for Summary Judgment based upon no facts shown to support a duty owed, express assumption of risk, and causation.

As to County of Santa Barbara:

County of Santa Barbara intends to file a motion for judgment on the pleadings under Rule 12(c) or a motion to dismiss Plaintiffs' First Amended Complaint as against the County, pursuant to Rule 12(b)(6). A motion under Rule 12(b)(6) or Rule 12(c) may be dispositive of Plaintiffs' claims against the County. If the case proceeds, County of Santa Barbara expects to bring a Rule 56 motion for summary judgment,, which may be dispositive of Plaintiffs' claims against the County of Santa Barbara.

**16. Unusual Legal Issues Presented:**

The parties do not anticipate any unusual legal issues. County of Santa Barbara expects that a protective order may be needed to protect confidential

County of Santa Barbara records.

**17. Ordering of Proof:**

Plaintiffs believe there should be no bifurcation or other modification of ordering of proof.

All Defendants submit the matter should be bifurcated and no damages testimony should be given until liability has been established by plaintiffs, as the jury will likely become unduly biased toward plaintiffs as a result of their profound sympathy toward the parents of children who were killed.

**18. Settlement/Alternative Dispute Resolution:**

No substantial settlement discussions or written communications regarding settlement have occurred.

On March 3, 2015, the Court issued a Notice to Parties of Court-Directed ADR Program. Pursuant to Local Rule 16-15.4, the parties jointly select ADR Procedure No. 2 ("The parties shall appear before a neutral selected from the Court's Mediation Panel"). The ADR session should occur on or before March 18, 2016.

**19. Manual for Complex Litigation:**

The parties do not believe that this is complex case requiring utilization of the Manual for Complex Litigation.

\* \* \* \* \*

The lead trial counsel for each party is a registered ECF User and has provided their Email Address of Record.

MANNING & KASS  
ELLROD, RAMIREZ, TRESTER LLP  
Attorneys at Law

1 DATED: June 1, 2015

McNICHOLAS, & McNICHOLAS, LLP  
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2  
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Patrick McNicholas  
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9 DATED: June 1, 2015

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MOBILE HOME PARK LP (erroneously  
sued as "CAPRI APARTMENTS AT ISLA  
VISTA")

17 DATED: June 1, 2015

MICHAEL C. GHIZZONI  
COUNTY COUNSEL

20 By: /S/ - Mary Pat Barry  
Mary Pat Barry  
Sr. Deputy County Counsel  
Attorneys for Defendants  
COUNTY OF SANTA BARBARA and  
SANTA BARBARA COUNTY SHERIFF'S  
DEPARTMENT

1 DATED: June 1, 2015

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4 By: /S/ - William S. Kronenberg  
5 William S. Kronenberg  
6 Stephen Fleischer-Ihn  
7 Attorneys for Defendant  
8 ASSET CAMPUS HOUSING. INC.  
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1 **ADDENDUM 1 TO THE PARTIES' JOINT RULE 26(f) REPORT: JOINT**  
 2 **DISCOVERY PLAN**

3 TO THE ABOVE-ENTITLED COURT:

4 In accordance with the Scheduling Conference Order by the Court requiring a  
 5 Joint Rule 26(f) Report, counsel for all parties submit the following Joint Discovery  
 6 Plan:

7 Plaintiff's Discovery as to Capri and Asset:

8 Written interrogatories, requests for admission, and demands for  
 9 production of documents and other tangible things to each defendant to be  
 10 propounded by December 2015. Plaintiffs also intend to demand inspection of  
 11 Defendants' facilities. Plaintiffs may need to conduct electronic discovery of  
 12 Defendants' records, including electronic records such as email and computer files.  
 13 Plaintiff may also need to subpoena third party records related to Elliot Rodger's  
 14 activities.

15 Depositions of witnesses as well as the depositions of persons  
 16 designated by Capri and Asset pursuant to Federal Rule of Civil Procedure 30(b)(6)  
 17 on the topics of tenant background checks, communications from tenants to  
 18 management regarding Elliot Rodger, communications from outside parties to  
 19 management regarding Elliot Rodger, policies and procedures of Capri, policies and  
 20 procedures of Asset, and the relationship between Asset and Capri.

21 Plaintiff's Discovery as to County of Santa Barbara:

22 Written interrogatories, requests for admission, and demands for  
 23 production of documents and other tangible things to each defendant to be  
 24 propounded by December 2015. Plaintiffs may need to conduct electronic discovery  
 25 of Defendants' records, including electronic records such call logs, incident reports,  
 26 and computer files.

27 Depositions of witnesses as well as the depositions of persons designated by  
 28 the County of Santa Barbara pursuant to Federal Rule of Civil Procedure 30(b)(6)

MANNING & KASS  
 ELLROD, RAMIREZ, TRESTER LLP  
 ATTORNEYS AT LAW

1 on the topics of policies and procedures regarding welfare checks, the welfare check  
 2 conducted on Elliot Rodger on or about April 30, 2014, the incident report from  
 3 Elliot Rodger's May 23, 2014 killing spree, use of the Department of Justice  
 4 Automated Firearms System via the California Law Enforcement  
 5 Telecommunications System, the January 15, 2014 incident which led to the arrest  
 6 of Hong, and other law enforcement contacts with Elliot Rodger prior to April 30,  
 7 2014.

8 County of Santa Barbara's position on subjects addressed by Rule 26(f) is as  
 9 follows:

10 Rule 26(f)(A): At this time, County does not recommend any changes in the  
 11 timing, form or requirement for disclosures under Rule 26(a).

12 Rule 26(f)(B): The County expects propounding limited written discovery and  
 13 conducting depositions focused on the issue of Plaintiffs' alleged damages. County  
 14 does not at this time see a need for an order requiring discovery to be conducted in  
 15 phases or focusing discovery on particular issues,

16 Rule 26(f)(C): County anticipates no issues regarding disclosure or discovery  
 17 of electronically stored information.

18 Rule 26(f)(D): County does expect issues concerning the need to protect the  
 19 confidentiality of Santa Barbara Sheriff's Office records and expects that the parties  
 20 will meet and confer as required by Rule 26(c) and submit a Stipulated Protective  
 21 Order to the Magistrate Judge for approval prior to production of any records  
 22 warranting such protection.

23 Rule 26(f)(E) & (F): County does not request any changes in the limitations  
 24 on discovery imposed by the Federal Rules of Civil Procedure or the Central  
 25 District's Local Civil Rules. At this time, the County does not request that the Court  
 26 issue any other orders under Rule 26(c) or Rule 16(b) or (c).

27 Asset's position on subjects addressed by Rule 26(f) is as follows:

28 Rule 26(f)(A): At this time, Asset does not recommend any changes in the

1 timing, form or requirement for disclosures under Rule 26(a).

2 Rule 26(f)(B): Asset will propound written discovery and conduct depositions  
3 focused on the issue of Plaintiffs' alleged damages. Asset may also conduct  
4 depositions on third parties knowledgeable of Elliot Rodger's conditions prior to the  
5 incident, if any. Asset does not at this time see a need for an order requiring  
6 discovery to be conducted in phases or focusing discovery on particular issues, and  
7 anticipates completing the above discovery by February 2016.

8 Rule 26(f)(C): Asset anticipates no issues regarding disclosure or discovery of  
9 electronically stored information, and expects to produce responsive electronically  
10 stored information in its original form, if required.

11 Rule 26(f)(D): Asset does expect issues concerning the need to protect the  
12 confidentiality of current and past tenant information and expects that the parties  
13 will meet and confer as required by Rule 26(c) and submit a Stipulated Protective  
14 Order to the Magistrate Judge for approval prior to production of any records  
15 warranting such protection.

16 Rule 26(f)(E): Asset does not request any changes in the limitations on  
17 discovery imposed by the Federal Rules of Civil Procedure or the Central District's  
18 Local Civil Rules.

19 Rule 26(f)(F): At this time, the Asset does not request that the Court issue any  
20 other orders under Rule 26(c) or Rule 16(b) or (c).